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2008 MAY 14 A 11: 39

May 9, 2008

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5981

Dear Mr. Jordan:

The undersigned represents Jared Polis, Friends of Jared Polis and Debbie K. Marquez, as Treasurer (hereinafter collectively referred to as "the Polis committee"). Through this letter the Polis committee responds to a complaint filed by Will Shafroth. In his complaint, Mr. Shafroth alleges that the Polis committee has filed incomplete reports with the Commission in violation of the Federal Election Campaign Act ("FECA"). Specifically, Mr. Shafroth alleges that the Polis committee's October 2007 Quarterly report fails to properly disclose all occupation and employer information for this report. Second, Mr. Shafroth alleges that the campaign did not adequately disclose information regarding the receipt of in-kind contributions to the committee on its 2007 October Quarterly Report and 2007 Year-End Report. On both counts, the complaint fails to allege a violation of federal campaign finance law and in fact, none has occurred. All portions of the reports were in full compliance with Commission requirements. Furthermore, the Committee has not received any inquiries into these reports by the Commission's Reports Analysis Division to indicate that they have not, in any way, materially complied with the Commission's requirements.

Best Efforts Requirements

Federal campaign finance law requires that political committees disclose the name, address, occupation and employer of all persons who contribute in excess of \$200, in the aggregate, in an election cycle. 2 U.S.C. §§ 413(13), 434(b)(3)(A). In addition, if a committee and its Treasurer make "best efforts" to obtain this information, the

committee's reports are considered in compliance with the Act's reporting requirements, even if all of the required information is not disclosed. 2 U.S.C. § 432(i).

The Commission has promulgated regulations to implement these "best efforts" requirements for contributions received by a committee.

Specifically, the Commission's regulations require that the committee:

- 1) Request the name, address, occupation and employer at the time of any solicitation, including a disclaimer that the committee is required to use its best efforts to obtain the information;
- 2) Make a follow-up request within 30 days of the receipt of a contribution that does not include all of the required information; and
- 3) Review its own internal records to obtain the occupation and employer of a donor; and
- 4) Amend its reports if information is received subsequent to the filing of the original report.

11 C.F.R. § 104.7.

The Polis committee has, in fact, fully complied with all aspects of the Commission's requirements. The Polis committee has included a request for occupation and employer on all solicitation materials. In addition, it has included a disclaimer that the request for such information is required by federal law. The Polis committee has made follow-up requests for all donations that did not include the occupation and employer on their donation, and the Polis committee has amended each report to include information received by the committee subsequent to the filing of the original report.

Attached as Exhibit A to this response, please find an affidavit from Darrick McCasland, who is the Finance Director of the Polis Committee. The affidavit demonstrates that the Polis committee has fully complied with the Commission's best efforts regulations and provides samples of solicitation and follow-up request materials.

From these exhibits it is clear that the Polis committee has fully complied with the reporting requirements of the FECA with respect to the disclosure of occupation and employer of its individual donors. Mr. Shafroth's complaint has not alleged any facts, other than mere speculation, to demonstrate otherwise.

Disclosure of In-Kind Contributions

The complaint filed by Mr. Shafroth also alleges that Mr. Polis has disclosed in-kind contributions to the committee but has not fully complied with the Commission's disclosure requirements for such payments. Contrary to Mr. Shafroth's assertions, these specific in-kind contributions reflect only a small portion of committee expenditures, and were not undertaken as an in-kind contribution by Mr. Polis in order to avoid full disclosure of the activities in question. Rather, these expenditures were personally paid

for by Mr. Polis since it was and is impractical for the committee to pay for certain expenses incurred by Mr. Polis. These include certain out of pocket expenses for a trip abroad which was partially for campaign purposes, as well as expenditures for the use of the time of individuals personally employed by Mr. Polis for campaign purposes. Mr. Polis is not seeking, nor does he desire, reimbursement for these expenses.

Of course, the Polis campaign has scrupulously accounted for these campaign related expenses incurred by Mr. Polis and has fully disclosed the value of the expenditures by Mr. Polis on its reports. The Polis committee has also included all such disbursements on forms filed by it in connection with the Millionaire's Amendment.

The Commission's requirements with respect to the disclosure of in-kind contributions only require that the committee disclose the name, address, occupation and employer, date, amount and purpose of an in-kind contribution. Nowhere in the FECA, the Commission's regulations or its guidance regarding the disclosure of in-kind contributions is the ultimate payee required to be disclosed. In fact, the Commission's electronic filing software does not allow for the disclosure of memo entries for an in-kind contribution.

Neither the FECA (2 U.S.C. § 434(b)(3)(A)) nor the Commission's regulations (11 C.F.R. § 104.13) require that the ultimate payee of an in-kind contribution be disclosed on reports filed with the Commission. Of course, the Commission's own guidance provided to the regulated community does not include any such requirement. For example, the Commission's Guide for Congressional Candidates and Committees (June 2004) explains that only the person who provides an in-kind contribution need be disclosed (See p. 74). In addition, in materials utilized recently by the Commission in its own trainings, the Commission has made it clear that such additional reporting is not required. In an in-kind contribution example discussed at the training, the Commission explained that the proper disclosure of an in-kind contribution need only include the name, address, occupation and employer of the donor, as well as the date, amount and purpose of the contribution. See House and Senate Reporting Scenarios Answer Key, pp. 1-2 (Attached as Exhibit B)

Additionally, the Commission's FEC File User Manual for Candidate Committees does not include a requirement that a memo entry be provided to disclose the recipient of an in-kind contribution (See p. E-92). In fact, it is impossible, under the Commission's current electronic filing system, to provide a memo schedule for an in-kind contribution. The Commission's electronic filing system currently allows for memo entries through the use of an electronic field labeled "Back Reference Tran ID Number." Through the use of this field, a committee can attach "memo entries" by referencing the "parent" id number to each memo entry. In the case of an in-kind contribution, this field is already utilized to cross reference the offsetting disbursement portion of the in-kind contribution to the actual in-kind receipt transaction. Thus, there is no technical way to create proper memo entries for in-kind contributions. See Federal Election Commission, Electronic Filing Specifications Requirements, Version 6.1, December 7, 2007.

Reports filed by the Polis committee have, in all respects, fully complied with the Commission's reporting requirements and the complaint by Mr. Shafroth should be immediately dismissed. If you have any questions or concerns, please call me at (202) 479-1111.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil Reiff', written over a horizontal line.

**Neil Reiff
Counsel to Jared Polis, Friends of
Jared Polis and Debbie K. Marquez,
as Treasurer**

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EXHIBIT B

**House and Senate Campaign Reporting
Scenario Answer Key**

SCENARIO #1 – In-kind Contributions of Goods or Services (Guide, p. 74)

Ryan Tucker, Treasurer of the Joe Schmoe for Congress Committee, received the following letter from two of the campaign's faithful volunteers, Oscar and Karen Parker:

*Oscar and Karen Parker
3715 Main Street
Anytown, US 12345
March 22, 2008*

Dear Mr. Tucker,

We hope you'll agree that the St. Patrick's Day fundraiser Karen and I hosted at our home on March 17 for Joe was a great success. Per your request, here is a breakdown of the goods and services we provided for the event. We spent \$500 on the invitations \$1,500 for the refreshments. As you know, I'm a photographer by trade and am self-employed as a sole proprietor. I have enclosed some photos I took (valued at \$357.25) for use by your campaign free of charge.

Wishing you continued success in your election campaign.

*Sincerely,
Oscar Parker*

Processing:

- 1. Are all of these transactions reportable in-kind contributions? Why or why not?**
In-kind contributions are donations of goods offered free, or at less than usual charge. The Parker's expenses for their at-home fundraiser are not reportable as in-kind contributions because of an exemption in the law that permits an individual to spend up to \$1,000 for food, beverages and invitations for an event held in his or her residence. (In this case, the amount is \$2,000 because his wife is also participating.)

On the other hand, the photos donated by Oscar do not fit within the exemption and the value of the photos is reportable as an in-kind contribution.

Report in-kind contribution: show reporting on Schedule A for Line 11(a)(i) and Schedule B for Line 17 (if itemized).

**Orlando'08
Cand-Party'08**